

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES JACKSON,

Defendant.

CR. NO. S-03-0258 EJG

ORDER DENYING MOTION FOR  
RETURN OF PROPERTY

Defendant, a federal prisoner proceeding pro se, has filed a motion for return of personal property, pursuant to Federal Rule of Criminal Procedure 41(g). After reviewing the record and the documents filed in connection with the motion, and for the reasons that follow, the motion is DENIED.

BACKGROUND

Defendant was convicted February 27, 2004, pursuant to his plea of guilty, to a drug trafficking offense and was sentenced May 7, 2004 to a term of 168 months imprisonment. In the instant motion he seeks the return of jewelry and cash allegedly seized from him at the time of his arrest on April 30, 2003. Rule 41(g)

1 directs the court to receive evidence on any factual issue  
2 necessary to decide the motion.

3 DISCUSSION

4 In its response to the motion, the government maintains it  
5 does not have possession of the items, and that none of them  
6 appear on the inventory prepared at the time of defendant's  
7 arrest.<sup>1</sup> The government's assertions are supported by a  
8 declaration filed by the arresting officer in which he states he  
9 has reviewed his report, photographs taken at the time of the  
10 arrest, and the Sacramento County Sheriff's Department  
11 Correctional Services Property and Clothing Record. In his  
12 declaration the officer states, among other things, that his  
13 usual custom and practice is to remove jewelry prior to  
14 transporting a defendant to jail. To that end, attached to the  
15 officer's declaration is a photograph taken at the time of the  
16 arrest showing jewelry items on what the officer describes as a  
17 kitchen counter in the residence at which defendant was arrested.  
18 Since the jewelry items described by defendant in his motion do  
19 not appear on the Property and Clothing Record, the officer  
20 surmises that the jewelry was left on the counter at the  
21 residence from which defendant was transported.

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23 <sup>1</sup> Other items, not mentioned by defendant, were seized  
24 pursuant to a search warrant, and were administratively forfeited  
25 by the Sacramento County District Attorney's Office. These items  
26 are listed in a Declaration of Forfeiture submitted by the  
government and include a Sony television, a Cadillac automobile,  
and \$8100 in cash.

1 In response defendant requests discovery, states that he  
2 recalls the arresting officer assisting in the removal of jewelry  
3 from defendant's person, and implies that the officer must have  
4 stolen defendant's personal property. In the face of the  
5 government's undisputed evidence, this unsupported assertion does  
6 not aid defendant. Even if the officer assisted in the removal  
7 of the jewelry from defendant's person, defendant has presented  
8 no evidence that the jewelry was taken and kept by the officer.

9 Finally, Rule 41(g) is a motion directed to the **federal**  
10 government for return of property in the possession of the  
11 **federal** government. Here, the undisputed evidence is that the  
12 personal property at issue was removed from the defendant prior  
13 to any involvement by the **federal** government. He was arrested by  
14 **county** employees, transported to the jail by **county** employees,  
15 and, upon arrival at the jail, was processed by **county** employees.  
16 In other words, the federal government was at no time the  
17 custodian of the property at issue in this motion. On this  
18 basis, as well as a lack of evidence, the motion is DENIED.

19 CONCLUSION

20 Based on the foregoing, defendant's motion for return of  
21 property is DENIED.

22 IT IS SO ORDERED.

23 Dated: January 24, 2008

24 /s/ Edward J. Garcia  
25 EDWARD J. GARCIA, JUDGE  
26 UNITED STATES DISTRICT COURT

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